vaded.(14) Mr. Charles A. Halleck, of Indiana, delivered remarks in explanation of the resolution. Referring to the privileges against arrest and against being questioned for speech or debate, he said:

> Through the years that language has been construed to mean more than the speech or statement made here within the four walls of the House of Representatives; it has been construed to include the conduct of Members and their statements in connection with their activities as Members of the House of Representatives. As a result, it seems clear to me that under the provisions of the Constitution itself the adoption of the resolution which was presented is certainly in order.

Mr. John W. McCormack, of Massachusetts, also delivered remarks and stated that "for the House to take any other action would be fraught with danger, for otherwise there is nothing to stop any number of suits being filed against enough Members of the House, and in summoning them, to impair the efficiency of the House of Representatives or the Senate to act and function as legislative bodies." He also stated that the fact that the Members and employees subpenaed were presently in California in the performance of their official duties was immaterial, as they were "out there on official business, and committees of this body are the arms of the House of Representatives." (15)

§ 16. For Speech and Debate

At article I, section 6, clause 1, the Constitution states that "for any speech or debate in either House, they [Senators and Representatives] shall not be questioned in any other place." That prohibition, approved at the Constitutional Convention with little if any discussion or debate,(16) was

14. H. Res. 190, read into the Record at 99 CONG. REC. 2356, 83d Cong. 1st Sess., and adopted *id.* at p. 2358. See § 18.4, infra, for the text of the resolution.

15. The discussion above in the House on the subpena of Members was cited in the case of *Smith* v *Crown Publishers,* 14 F.R.D. 514 (1953).

16. See 5 Elliott's Debates 406 (1836 ea.) and 2 Records of the Federal Convention 246 (Farrand ed. 1911). See also *U.S.* v *Johnson,* 383 U.S. 169 (1966) for the history of the incorporation of the privilege into the United States Constitution, and for the history of the constitutional clause in general.

For the views of early constitutional commentators on the origins and scope of the privilege, see Jefferson's Manual, *House Rules and Manual* §§ 287, 288, 301, 302 (1973) and Story, *Commentaries on the Constitution of the United States,* § 863, Da Capo Press (N. Y. repute. 1970).

drawn directly from the English parliamentary privilege, as embodied in the English Bill of Rights of 1689:

> That the freedom of speech, and debates for proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament.[17]

The clause serves not only to insure the independence and unbridled debate of Members of the legislature,[18] but also to reinforce the constitutional doctrine of separation of powers.[19]

As stated above,[20] the scope and application of the immunity for speech and debate has been principally fashioned not by Congress but by the courts. Immunity is usually raised as a defense to litigation challenging the activities of Congressmen or of Congress itself. The Supreme Court has relied heavily upon English parliamentary and judicial precedents in order to resolve issues related to the operation of the immunity in the United States Congress.[1]

For more recent commentary, see Comment, Brewster, Gravel and Legislative Immunity, 73 Col. L. Rev. 125 (1973) (hereinafter cited as 73 Col. L. Rev. 125); Cella, The Doctrine of Legislative Privilege of Freedom of Speech or Debate: Its Past, Present and Future as a Bar to Criminal Prosecutions in the Courts, 2 Suffolk L. Rev. 1 (1968); Oppenheim, Congressional Free Speech, 8 Loyola L. Rev. 1 (1955); Yankwich, The Immunity of Congressional Speech Its Origin, Meaning and Scope, 99 U. Pa. L. Rev. 960 (1951).

17. 1 W & M, Sess. 2, c. 2, art. 9.

18. The English parliamentary privilege developed from conflict over the right of legislators to speak freely and to criticize the monarchy. See Wittke, The History of the English Parliamentary Privilege, Ohio State Univ. (1921).

Not since 1797, during the administration of John Adams, has the executive branch attempted imprisonment of dissenting Congressmen (see 73 Col. L. Rev. 125, 127, 128). See also § 17.4, infra (Justice Department inquiry, where a Senator obtained and disclosed classified materials).

19. *U.S.* v *Johnson,* 383 U.S. 169, 170 (1966).

"The immunities of the Speech or Debate Clause were not written into the Constitution simply for the personal or private benefit of Members of Congress, but to protect the integrity of the legislative process by insuring the independence of individual legislators." *U.S.* v *Brewster,* 408 U.S. 501, 507 (1972). See also *Kilbourn* v *Thompson,* 103 U.S. 168, 203 (1881) and *Coffin* v *Coffin,* 4 Mass. 1, 28 (1808).

20. See § 15, supra.

1. See, for example, *Gravel* v *U.S.,* 408 U.S. 606 (1972); *U.S.* v *Brewster,* 408 U.S. 501 (1972); *U.S.* v *Johnson,* 383 U.S. 169 (1966); *Tenney* v *Brandhove,* 341 U.S. 367 (1951);

The speech and debate that is protected from inquiry either by the judicial branch or by the executive branch includes all things done in a session of the House by one of its Members in relation to the business before it.[2] All speech, debate, and remarks on the floor of the House are privileged,[3] as is material not spoken on the floor of the House but inserted in the Record by a Member with the consent of the House.[4] Republication and unofficial circulation of reprints of the *Congressional Record* are not, however, absolutely privileged, either under American law or under English law.[5] Such reprints enjoy a qualified privilege, so that in a suit for defamation actual malice on the part of the Congressman circulating the reprint would have to be shown.[6]

Kilbourn v *Thompson,* 103 U.S. 165 (1880).

2. *Powell* v *McCormack,* 395 U.S. 486, 502 (1969), quoting from *Kilbourn* v *Thompson,* 103 U.S. 168, 204 (1881).

For the scope of the immunity as to other legislative activities, see § 17, infra.

3. "I will not confine it [the Speech and Debate Clause] to delivering an opinion, uttering a speech, or haranguing in debate, but will extend it to the giving of a vote, to the making of a written report, and to every other act resulting from the nature and in the execution of the office. . . . And I am satisfied that there are cases in which he [the legislator] is entitled to this privilege when not within the walls of the Representatives' chamber." *Coffin* v *Coffin,* 4 Mass. 1, 27 (1808).

4. See § 16.3, infra.

5. For the English rule on the subject of unofficial reports and reprints, see Story, *Commentaries on the Constitution of the United States,* § 863, Da Capo Press (N.Y. repute. 1970) and 1 Kent's Commentaries 249, note (8th ed. 1854). It should be noted, however, that publication or republication of speeches made on the floor of Parliament was not in itself lawful at the time of the American Constitutional Convention (see 73 Col. L. Rev. 125, 147, 148).

For the American rule, see the cases cited at § 16.3, infra. See also Restatement of Torts §§ 590 and 611, American Law Institute (St. Paul 1938).

6. See Story, *Commentaries on the Constitution of the United States,* § 866 and Restatement of Torts § 590, comment b. See also *New York Times Co.* v *Sullivan,* 376 U.S. 254 (1964) (defamatory statement must have been made either with knowledge that it was false or with reckless disregard as to whether it was false or not); *Murray* v *Brancato,* 290 N.Y. 52, 48 Northeast 2d 257 (1943); *Coleman* v *Newark Morning Ledger Co.,* 29 N.J. 357, 149 A.2d 193 (1959).

In *Trails West, Inc.* v *Wolff,* 32 N.Y. 2d 207 (1973), the New York Court of Appeals held that an allegedly defamatory press release by a Congressman, on a matter of public interest and concern, was entitled to

Protected speech and debate on the floor includes voting records and reasons therefore,[7] introducing bills and resolutions, and passing bills and resolutions.[8] As early as 1810, Chief Justice Marshall refused to inquire into the motives of a state legislature whose Members were allegedly bribed to secure passage of an act.[9]

Controversies relating to the scope of the Speech and Debate Clause have arisen in three different types of court proceedings: (1) criminal charges, principally bribery, against Members in relation to their legislative duties;[10] (2) civil actions for defamation against Congressmen:[11] and (3) litigation claiming private damage from allegedly unconstitutional resolutions and orders of Congress.[12] In the third category is *Kilbourn* v *Thompson,* where false imprisonment by an order of the House was alleged.[13] The Court in that case held that the participation of Members in passing a resolution was protected by the Speech and Debate Clause, although employees of the House charged with the execution of the resolution could be held personally liable for enforcing an unconstitutional congressional act.[14] Since *Kilbourn,* the courts have protected Members from civil liability, citing their speech and debate immunity, but have held congressional employees liable in some cases for executing unconstitutional orders of the House or Senate.[15]

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the qualified privilege enunciated in *New York Times Co.* v *Sullivan.* Since the plaintiff had not proved actual malice, the case was dismissed.

7. *Smith* v *Crown Publishers,* 14 F.R.D. 514 (1953) (oral deposition of Senator limited as to voting record and motives).

8. *Powell* v *McCormack,* 395 U.S. 486 (1969), and *Kilbourn* v *Thompson,* 103 U.S. 165 (1880) (participation of Members in passing resolution protected by Speech and Debate Clause).

9. *Fletcher* v *Peck,* 10 U.S. (6 Cranch) 87, 130 (1810).

10. The bribery case of *U.S.* v *Johnson,* 383 U.S. 169 (1966) was of first impression for the Supreme Court.

11. The House has in the past censured Members for unparliamentary language (see 2 Hinds' Precedents § 1259).

12. For litigation alleging private damage from committee reports and activities, see § 17, infra.

13. 103 U.S. 165 (1880) (imprisonment for contempt of congressional committee).

14. 103 U.S. at 200–205.

15. See, *e.g.,* § 17.1, infra. The naming of congressional employees as defendants in a case seeking a declaratory judgment has been used as a basis for jurisdiction to entertain the suit, when the claim against House Members was dismissed due to the immu-

A similar rule has been followed in cases involving criminal charges against Members of Congress. *United States* v *Johnson* [16] and *Brewster* v *United States* [17] established the principle that a criminal prosecution could not inquire into the motivation, preparation, or content of a Member's speech and that the speech could not be made the basis of a bribery or conspiracy charge. However, a Member may be convicted for accepting a bribe to perform legislative acts, if the prosecution does not inquire into the legislative acts themselves but only into the offering and acceptance of the bribe. And a Member may be convicted of bribery in relation to conduct that is not related to the legislative function.[18]

The Speech and Debate Clause immunity precludes any inquiry into whether remarks were made in the discharge of official duties, or made with malice or ill will. The Supreme Court stated in *Tenney* v *Brandhove:* [19]

> The claim of an unworthy purpose does not destroy the privilege. Legislators are immune from deterrence to the uninhibited discharge of their legislative duty, not for their private indulgence but for the public good. One must not expect uncommon courage even from legislators. The privilege would be of little value if they could be subjected to the cost and inconvenience and distractions of a trial upon conclusion of the pleader, or to the hazard of a judgment against them based upon a jury's speculation as to motive.[20]

The immunity of speech and debate would appear to apply to Delegates and Resident Commissioners as well as to Members, because of its purpose of insuring

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nity of speech and debate (see § 16.5, infra).

16. 383 U.S. 169 (1966) (for analysis, see § 16.1, infra).

17. 408 U.S. 501 (1972) (for analysis, see § 16.2, infra).

18. See *Burton* v *U.S.*, 202 U.S. 344 (1906) (conviction of attempt to influence Post Office Department); *May* v *U.S.*, 175 F2d 994 (D.C. Cir. 1949) (conviction of accepting compensation for services before governmental departments).

The Supreme Court has reserved the question whether prosecution of a Congressman, based upon a narrowly drawn statute to regulate congressional conduct, could inquire into legislative acts without violating the Speech and Debate Clause. See *U.S.* v *Johnson*, 383 U.S. 169, 180–185 (1966); *U.S.* v *Brewster*, 408 U.S. 501, 521, 529 (1972).

19. 341 U.S. 367 (1951). *Tenney* involved the immunity of state legislators, which the Court found to be on the same footing as the constitutional privilege. The Court refused to inquire into the motives of a state legislative committee which was allegedly violating the civil rights of a citizen.

20. 341 U.S. at 377.

the independency and integrity of the legislative body in general.[1]

Cross References

Committee reports, activities, and employees protected by the Speech and Debate Clause, see § 17, infra.

Legislative activities protected by the Speech and Debate Clause, see § 17, infra.

Collateral References

Brewster, Gravel and Legislative Immunity, 73 Col. L. Rev. 125 (comment) (1973).

Bribed Congressman's Immunity from Prosecution, 75 Yale L. Jour. 335 (1965).

Cella, The Doctrine of Legislative Privilege of Freedom of Speech or Debate: Its Past, Present and Future as a Part of Criminal Prosecutions in the Courts, 2 Suffolk L. Rev. 1 (1968).

Constitutional Privilege of Legislators: Exemption from Arrest and Action for Defamation, 9 Minn. L. Rev. 442 (comment) (1925).

Defamation—Publication of Defamatory Statements Made by U.S. Senator at Press Conference is Qualifiedly Privileged, 28 Fordham L. Rev. 363 (1959).

Ervin (Senator, N.C.), The Gravel and Brewster Cases: An Assault on Congressional Independence, 59 Va. L. Rev. 175 (Feb. 1973).

Immunity Under the Speech or Debate Clause for Republication and From Questioning About Sources, 71 Mich. L. Rev. 1251 (note) (May 1973).

Oppenheim, Congressional Free Speech, 8 Loyola L. Rev. 1 (1955).

"They Shall Not Be Questioned . . ."—Congressional Privilege to Inflict Verbal Injury, 3 Stan. L. Rev. 486 (comment) (1951).

U.S. v *Johnson*, 337 F2d 180 (4th Cir. 1964), 78 Harv. L. Rev. 1473 (comment) (1965).

United States Constitution Annotated, Library of Congress, S. Doc. No. 92–82, 117–122, 92d Cong. 2d Sess. (1972).

Veeder, Absolute Immunity in Defamation: Legislative and Executive Proceedings, 10 Col. L. Rev. 131 (1910).

Yankwich, The Immunity of Congressional Speech: Its Origin, Meaning and Scope, 99 U. Pa. L. Rev. 960 (1951).

1. In *Doty* v *Strong*, 1 Pinn. 84 (Wis. Territ. 1840), the constitutional privilege from arrest was held applicable to Delegates. Delegates and Resident Commissioners, as governmental officials, have at least the common law privilege from suit enunciated in *Barr* v *Mateo*, 360 U.S. 564 (1959). For the common law privilege in general, see § 15, supra.

As Defense to Bribery or Conspiracy

§ 16.1 The Supreme Court held a Member of the 86th Congress immune from conviction for conspiracy to defraud the government, where the prosecution was based upon a speech made by the Member on the floor of the House.[2]

2. *U.S.* v *Johnson*, 383 U.S. 169 (1966), in which the court affirmed the voidance of the conviction by a United

On June 30, 1960, Mr. Thomas F. Johnson, of Maryland, was recognized under a previous order to speak on the floor of the House. He delivered a speech repudiating critical attacks on the independent savings and loan industry of Maryland.(3)

Mr. Johnson was subsequently indicted and convicted for conspiracy to defraud the United States, among other charges. The conspiracy count was based upon alleged payment to Mr. Johnson to deliver a speech in the House favorable to savings and loan institutions and to influence the Justice Department to dismiss criminal charges against these institutions.(4)

During prosecution of the charges against Mr. Johnson, extensive inquiry was made into the manner of preparation of the June 30 speech, the precise ingredients and phrases of the speech, and the motive in delivering the speech.(5)

The Supreme Court voided the conviction of Mr. Johnson, and held that the Speech and Debate Clause of the Constitution precluded judicial inquiry into the motivation for a Congressman's speech and prevented such a speech from being made the basis of a criminal charge against him for conspiracy to defraud the government.(6)

§ 16.2 The Supreme Court upheld the conviction of a former Senator for accepting bribes to act in a certain way on legislation before his committee, where the prosecution did not require inquiry into legislative acts or motivation.(7)

Where a former United States Senator was indicted for asking

States Court of Appeals, 337 F2d 180 (4th Cir. 1964). The Supreme Court opinion is reprinted at 117 CONG. REC. 32456, 92d Cong. 1st Sess., Sept. 20, 1971.

3. 106 CONG. REC. 15258, 15259, 86th Cong. 2d Sess.

4. See 383 U.S. at 170, 171.

5. See 383 U.S. at 173–177 and notes 4–6.

6. *U.S.* v *Johnson,* 383 U.S. 169, 184, 185 (1966).

7. *U.S.* v *Brewster,* 408 U.S. 501 (1972). The Court overruled the U.S. District Court for the District of Columbia, which had dismissed the indictment on the ground that Senator Brewster was immune from conviction under the Supreme Court's interpretation of the Speech and Debate Clause in *U.S.* v *Johnson,* 383 U.S. 169 (1966) (see § 16.1, supra).

See also *U.S.* v *Dowdy,* 479 F2d 213 (4th Cir. 1973), cert. denied, 414 U.S. 823 (1973), where a United States Court of Appeals found an infringement of the Speech and Debate Clause as to some but not all of the counts of an indictment against a former Member of the House.

and accepting sums of money in exchange for acting a certain way on postage legislation before the Senate Committee on Post Office and Civil Service, of which he was a member, the Supreme Court held that the indictment was a proper one. The Court first stated that there were a variety of legitimate activities of Congressmen, political in nature rather than legislative, which were not protected by the Speech and Debate Clause of the Constitution.(8) The Court then stated:

> Taking a bribe is, obviously, no part of the legislative process or function; it is not a legislative act. . . . When a bribe is taken, it does not matter whether the promise for which the bribe was given was for the performance of a legislative act as here. . . . And an inquiry into the purpose of the bribe "does not draw into question the legislative acts of the defendant Member of Congress or his motives for performing them."(9)

8. 408 U.S. at 512. Federal courts have used the reasoning of *Brewster* in order to question the use by Congressmen of their franking privilege. In *Hoellen* v *Annunzio,* 468 F2d 522 (7th Cir. 1972), cert. denied, 412 U.S. 953 (1973), the court held that the Speech and Debate Clause did not prohibit inquiry into use of the frank, since the mailings challenged were for political purposes and only incidental to the legislative process. See also *Schiaffo* v *Helstoski,* 350 F Supp 1076 (D.N.J. 1972).

9. 408 U.S. at 526, quoting from *U.S.* v *Johnson,* 383 U.S. 169, 185 (1966).

As Defense to Defamation

§ 16.3 Where a citizen claimed defamation by a Congressman in remarks inserted in the Congressional Record, a federal court held that the Speech and Debate Clause protects material inserted in the Record with the consent of the House, but that republished excerpts are not protected.(10)

10. *McGovern* v *Martz,* 182 F Supp 343 (D.D.C. 1960).

Republication and unofficial circulation of reprints of the *Congressional Record,* if libelous, are not protected by the Speech and Debate Clause. See *Long* v *Ansell,* 69 F2d 386, aff., 293 U.S. 76 (1934) (indicating that circulated reprints of Record would be libel per se if allegations of petition proved) and *Gravel* v *U.S.,* 408 U.S. 606 (1972) (private republication of classified study disclosed at Senate subcommittee hearing not privileged from grand jury inquiry).

If a public official claims to have been libeled by reprints of the *Congressional Record,* it would appear that he would have to prove "actual malice" on the part of the Congressman sought to be sued, under *New York Times Co.* v *Sullivan,* 376 U.S. 254 (1964). A state court held a Congressman qualifiedly privileged from libel for remarks made during a press conference by applying the *Times* rule, in *Trails West, Inc.* v *Wolff,* 32 N.Y. 2d 207, —— N.E. 2d —— (1973).

In the course of a suit by Mr. George S. McGovern, of South Dakota, against a newspaper publisher, for falsely reporting Mr. McGovern as the sponsor of a Communist front organization, the publisher counterclaimed for defamation, based upon a *Congressional Record* insert by Mr. McGovern on Aug. 5, 1958. The insert mentioned the publisher by name.(11)

The United States District Court for the District of Columbia dismissed the counterclaim, holding that a Congressman's constitutional immunity from being questioned for speech and debate extends to all material inserted by him in the *Congressional Record*, with the consent of the House.(12)

The court added that the absolute privilege to inform fellow legislators becomes a qualified privilege when portions of the *Congressional Record* are republished and unofficially disseminated. No allegation of republication had been made in the controversy before the court.(13)

§ 16.4 A federal court dismissed charges of slander against a Senator because the words complained of were delivered in a speech in the Senate Chamber and were protected by the Speech and Debate Clause, despite allegations they were not spoken in discharge of official duties.(14)

On Apr. 12, 1928, Senator James Couzens, of Michigan, delivered a speech on the Senate floor in which he discussed a large additional tax assessment made against him by the Internal Revenue Service when he was a member of a special committee investigating Internal Revenue Service abuses.(15)

In the course of his remarks, Senator Couzens mentioned the name of Mr. Cochran, a former clerk of the Internal Revenue

11. 104 CONG. REC. A–7032, 85th Cong. 2d Sess.

12. 182 F Supp at 347.

13. 182 F Supp at 347, 348.

14. *Cochran* v *Couzens*, 42 F2d 783 (D.C. Cir. 1930), cert. denied, 282 U.S. 874 (1930).

15. 69 CONG. REC. 6253–60, 70th Cong. 1st Sess. Senator Couzens had been appointed on Mar. 24, 1924, to a special committee to investigate the Internal Revenue Service. 66 CONG. REC. 4023.

S. Res. 213, to investigate the tax assessment against Senator Couzens and the threatened intimidation by the Internal Revenue Service, was introduced in the Senate and referred to the Committee on the Judiciary in the 70th Congress. 69 CONG. REC. 7379, 70th Cong. 1st Sess., Apr. 28, 1928.

Service, who Senator Couzens stated had offered him "inside" information of the Service, for a contingent fee, which would enable him to have the assessment voided.(16)

Mr. Cochran subsequently sued Senator Couzens for slander, alleging that the remarks made in the Senate by the Senator were not spoken in discharge of his official duties. A United States Court of Appeals held that Senator Couzens' remarks in the Senate Chamber were absolutely privileged under the Speech and Debate Clause despite that allegation.(17)

Defense to Suit by Excluded Member

§ 16.5 Where a Member-elect excluded from the 90th Congress challenged the exclusion in court and named Members and officers of the House as defendants, the Supreme Court declared the Members immune from suit under the Speech and Debate Clause but upheld the challenge as against the named officers.(18)

On Mar. 1, 1967, the House excluded from membership Member-elect Adam C. Powell, of New York.(19)

Mr. Powell subsequently filed suit in Federal District Court challenging the action of the House in excluding him; he named as defendants the Speaker of the House, certain named Members, and the Clerk, Sergeant at Arms, and Doorkeeper of the House.(20) The defendants as-

16. *Id.* at pp. 6258, 6259. Letters written by and about Mr. Cochran were inserted in the Record *id.* at p. 6259.

17. *Cochran* v *Couzens*, 42 F2d 783 (D.C. Cir. 1930), cert. denied, 282 U.S. 874 (1930).

18. *Powell* v *McCormack*, 395 U.S. 486 (1969). The court affirmed in part and reversed in part the finding of the U.S. Court of Appeals, 395 F2d 577 (D.C. Cir. 1968) and remanded to the U.S. District Court for the District of Columbia.

Portions of the text of the opinion, relating to the Speech and Debate Clause, appear at 117 CONG. REC. 32459, 92d Cong. 1st Sess. For a complete synopsis of the House expulsion proceedings in this case, see § 9.3, supra.

19. 113 CONG. REC. 5038, 90th Cong. 1st Sess. (see H. Res. 278).

20. See the Speaker's announcement that the suit had been filed, 113 CONG. REC. 6035, 90th Cong. 1st Sess., Mar. 9, 1967. Subpenas to the Speaker and others, the complaint in the suit, and application (with memorandum) for the convening of a three-judge federal court were inserted in the Record at 113 CONG. REC. 6036–40.

serted, among other claims, that the Speech and Debate Clause of the Constitution was an absolute bar to Mr. Powell's suit.(1)

When the litigation reached the Supreme Court, the Court held that the Speech and Debate Clause barred suit against the respondent Congressmen but did not bar action against the legislative officials charged with unconstitutional activity.(2)

§ 17. For Legislative Activities

The constitutional clause prohibiting questioning of a Member about any speech or debate in the House is not confined merely to remarks delivered in the Chamber and printed in the *Congressional Record*.(3) As long as legislators are "acting in the sphere of legitimate legislative activity,"(4) they are protected not only from the consequence of litigation but also from the burden of defending themselves.(5) The immunity may also extend to congressional aides and employees where they assist in an integral way in the legislative process.(6) Thus, Members of

See 113 CONG. REC. 8729–62 for further briefs, memoranda, and the opinion of the U.S. District Court Judge dismissing the original complaint.

1. See Point II (A) of Defendants' Memorandum of Points and Authorities in Support of Defendants' Motion to Dismiss in *Powell* v *McCormack* (No. 559–67, U.S. Dist. Ct. for D.C.), reprinted at 113 CONG. REC. 8743–45, 90th Cong. 1st Sess., Apr. 10, 1967.

2. The Court stated that the fact that the House officials were acting pursuant to express orders of the House did not preclude judicial review of the constitutionality of the underlying legislative decision, 395 U.S. at 501–506, and applied the doctrine that, "although an action against a Congressman may be barred by the Speech or Debate Clause, legislative employees who participated in the unconstitutional activity are responsible for their acts." 395 U.S. at 504.

3. The courts have stated that the protection of the clause, at U.S. Const. art. I, § 6, clause 1, extends to every "act resulting from the nature and in the execution of the office," including an act "not within the walls of the Representatives' chamber," *Coffin* v *Coffin*, 4 Mass. 1, 27 (1808), and to "committee reports, resolutions, and things generally done in a session of the House by one of its Members in relation to the business before it," *Powell* v *McCormack*, 395 U.S. 486, 502 (1969), quoting *Kilbourn* v *Thompson*, 103 U.S. 168, 204 (1881).

4. *Tenney* v *Brandhove*, 341 U.S. 367, 376 (1951).

5. *Dombrowski* v *Eastland*, 387 U.S. 82, 85 (1967); *Powell* v *McCormack*, 395 U.S. 486, 505 (1969).

6. The Supreme Court stated in *Gravel* v *U.S.*, 408 U.S. 606, 616, 617 (1972) (J. White) (analyzed at § 17.4, infra), "that it is literally impossible, in view of the complexities of the modern legislative process . . . for Mem-